

①  
No. 88-195

Supreme Court, U.S.

FILED

AUG 31 1988

JOSEPH F. SPANIOL, JR.,  
CLERK

In The  
Supreme Court of the United States  
October Term, 1988

---

DENZIL G. KREISHER,

*Petitioner,*

vs.

MOBIL OIL CORPORATION,

*Respondent.*

---

BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI

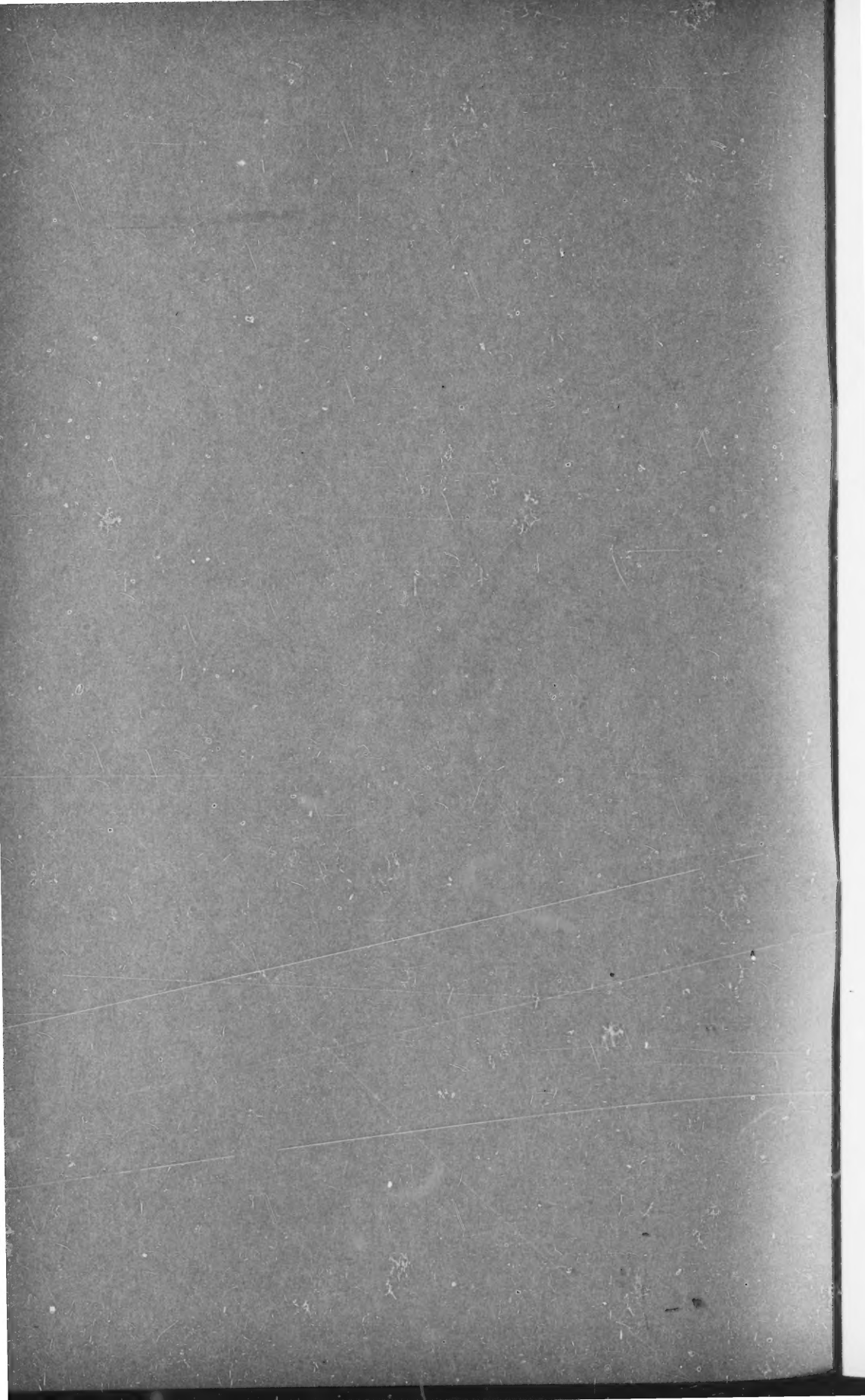
---

DAVID M. HEILBRON  
JOHN R. REESE\*  
LESLIE G. LANDAU  
DONNA M. RYU  
Three Embarcadero Center  
San Francisco, California 94111  
Telephone: (415) 393-2000

*Attorneys for Respondent  
Mobil Oil Corporation*

WILLIAM K. O'BRIEN  
McCUTCHEN, DOYLE, BROWN & ENERSEN  
Of Counsel

\*Counsel of Record



## QUESTIONS PRESENTED

Should the Court review a California intermediate appellate court decision holding that federal courts have exclusive jurisdiction over claims under the Petroleum Marketing Practices Act ("PMPA"), 15 U.S.C. § 2801 *et seq.*, where:

- (1) The decision conflicts with no federal circuit court holding, nor any holding of a state court of last resort and raises no substantial federal issue;
- (2) The only conflicting analysis, endorsed by petitioner, is by an intermediate Pennsylvania court, has never been followed by any other court, and may disappear because the highest court of Pennsylvania has decided to review it;
- (3) The decision is unpublished and under California law may not be cited as precedent; and
- (4) Reversal of the decision would not even be dispositive between the parties because the trial court correctly held petitioner's PMPA claim to be time-barred in any event.

# TABLE OF CONTENTS

	Page
QUESTION PRESENTED .....	i
INTRODUCTION AND SUMMARY OF ARGUMENT .....	1
STATEMENT OF THE CASE.....	2
REASONS FOR DENYING THE WRIT.....	5
I. THIS CASE DOES NOT MEET THE CRITERIA FOR CERTIORARI UNDER SUPREME COURT RULE 17.1(b).....	5
II. THERE IS NO SUBSTANTIAL FEDERAL ISSUE TO RESOLVE .....	9
CONCLUSION .....	13
RULE 28.1 LIST (APPENDIX A) .....	A-1

## TABLE OF AUTHORITIES

CASES	Page(s)
<i>ARCO Petroleum Prods. Co. v. Williams</i> , 496 N.E.2d 1098 (Ill. App. 1986).....	7
<i>American Fire Casualty Co. v. Finn</i> , 341 U.S. 6 (1951) .....	3
<i>American Well Works v. Layne &amp; Bowler Co.</i> , 241 U.S. 257 (1916) .....	12
<i>Bates v. Chevron</i> , 260 S.E.2d 367 (Ga. App. 1979).....	6
<i>Calif. ARCO Dist., Inc. v. Atlantic Richfield Co.</i> , 158 Cal. App. 3d 349 (1985) .....	7
<i>Cianci v. Superior Court</i> , 40 Cal. 3d 903 (1985) .....	7
<i>Consumers Pet. of Conn., Inc. v. Duhan</i> , 452 A.2d 123 (Conn. Super. 1982).....	7
<i>Corwin v. Los Angeles Newspaper Service Bureau, Inc.</i> , 4 Cal. 3d 842 (1971) .....	12
<i>DaCosta's Automotive, Inc. v. Birchwood Plaza Shell, Inc.</i> , 482 N.Y.S.2d 832 (1984) .....	7
<i>ERA Enterprises, Inc. v. Gulf Oil Corp.</i> , 506 So. 2d 160 (La.App. 1987) .....	7
<i>Frankard v. Amoco Oil Co.</i> , 342 N.W.2d 247 (Wis. App. 1983) .....	7
<i>Johnson v. Mobil Oil Corp.</i> , 528 A.2d 155 (Pa. Super. 1987), rev. granted, 544 A.2d 445 (Pa. July 18, 1988).....	6, 9, 12
<i>Mansfield, Coldwater &amp; Lake Michigan Ry. v. Swan</i> , 111 U.S. 379 (1884) .....	3
<i>Niakan v. Samaan</i> , 199 Cal. App. 3d 716 (1988).....	6, 9, 10

## TABLE OF AUTHORITIES—Continued

Page(s)

<i>Ricco v. Shell Oil Co.</i> , 434 A.2d 1151 (N.J. Super. 1981).....	7
<i>Rustom v. Atlantic Richfield Co.</i> , 618 F. Supp. 210 (C.D. Cal. 1985) .....	6, 9, 10
<i>Ted's Tire Service, Inc. v. Chevron U.S.A., Inc.</i> , 470 F. Supp. 163 (D. Conn. 1979) .....	9
<i>Thomas v. Amoco Oil Co.</i> , 455 So. 2d 1187 (La. App.), <i>rev. denied</i> , 460 So. 2d 612 (1984).....	7
<i>Walters v. Chevron U.S.A., Inc.</i> , 269 S.E.2d 495 (Ga. App. 1980) .....	6

## STATUTES AND RULES

15 U.S.C. § 1 <i>et seq.</i> .....	12
15 U.S.C. § 2801 <i>et seq.</i> .....	i
15 U.S.C. § 2805(a) .....	3, 8, 9, 11
15 U.S.C. § 2805(b)(2).....	10
15 U.S.C. § 2805(d)(1)(A).....	10
15 U.S.C. § 2806(a) .....	12
28 U.S.C. § 1257(3) .....	5
28 U.S.C. § 1331 .....	11
28 U.S.C. § 1332.....	11
Cal. Bus. Prof. Code §§ 16,700 <i>et seq.</i> .....	12
Cal. Rules of Court 976(b) .....	4
Cal. Rules of Court 977(a) .....	7

## TABLE OF AUTHORITIES—Continued

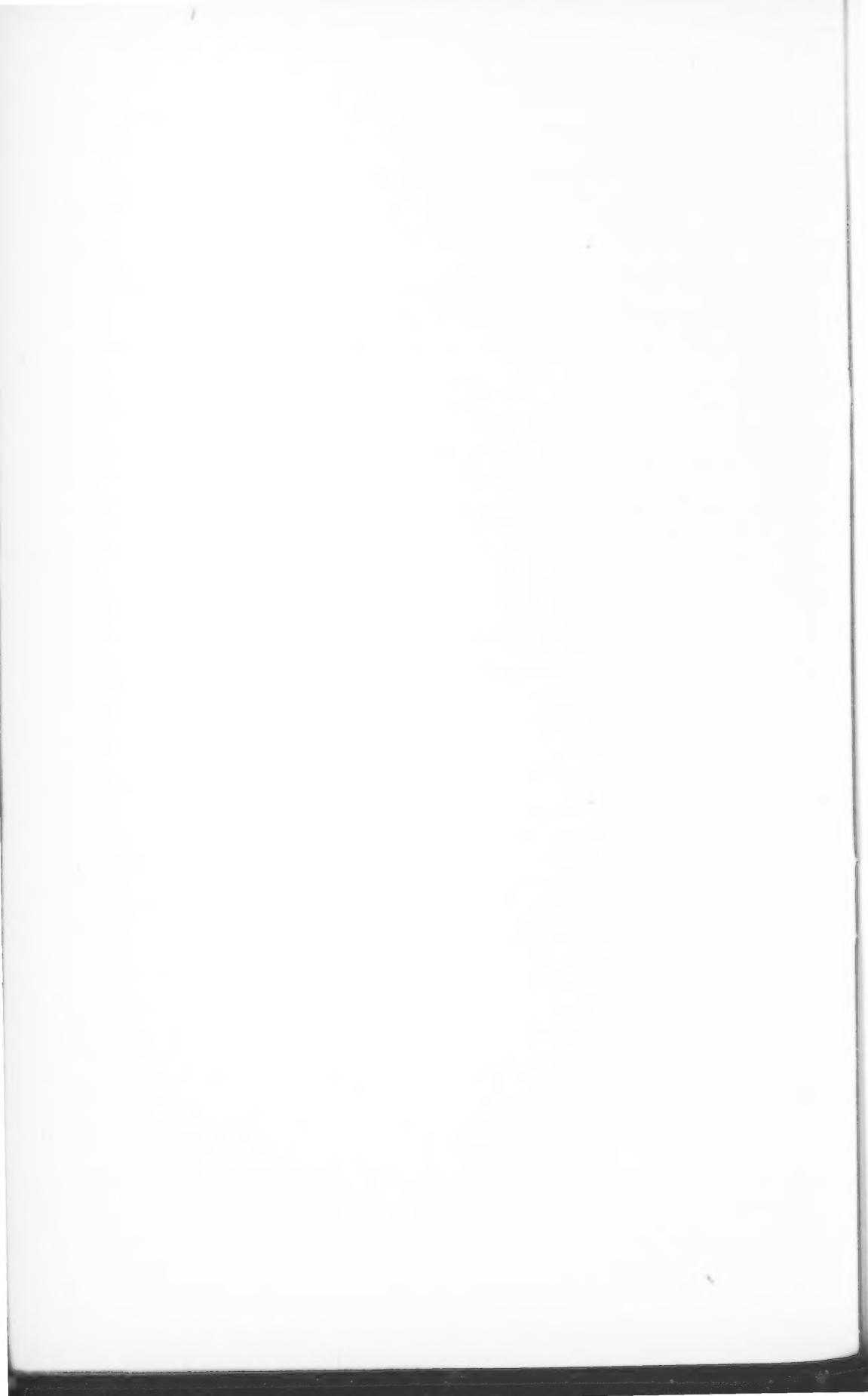
	Page(s)
Fed. R. Civ. P. 65 .....	10
Supreme Court Rule 17 .....	5
Supreme Court Rule 17.1(b) .....	5

## LEGISLATIVE HISTORY

S. Rep. No. 95-731, 95th Cong. 2d Sess., <i>reprinted</i> in, 1978 U.S. Code Cong. & Ad. News 873 .....	10
H.R. Rep. No. 95-161, 95th Cong. 1st Sess. 14 (1978) .....	10

## MISCELLANEOUS

13 J. Moore, <i>Moore's Federal Practice</i> ¶ 817.21 (1988) .....	6
--	---





No. 88-195

---

In The  
Supreme Court of the United States  
October Term, 1988

---

DENZIL G. KREISHER,

*Petitioner,*

vs.

MOBIL OIL CORPORATION,

*Respondent.*

---

BRIEF IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI

---

INTRODUCTION AND SUMMARY OF ARGUMENT

There is nothing to review here. An intermediate California court declined to follow the faulty reasoning of an intermediate Pennsylvania court on a question of federal jurisdiction, and instead followed a well-reasoned federal district court decision. No circuit court has addressed the issue. No "state court of last resort" has addressed the issue. When they do, as they surely will, those courts will likely reach the same conclusion, obviating the need for any review by this Court at all. In short, the issue, if there is one, is not yet ripe for this Court's review.

If the Court were to address the issue, there is no reason to do it in this case. The decision below is unpublished, and will not confuse anyone because under California law it cannot be cited or relied on. Moreover, the petitioner's PMPA claim is time-barred in any event, so there is an alternative ground for affirming the decision below.

---

### STATEMENT OF THE CASE

Petitioner Denzil Kreisher operated a Mobil service station in Marin County, California. (App. 2) On June 18, 1981, after Kreisher repeatedly had violated the terms of his franchise agreement – bouncing checks (Petition at 7-8), misbranding gasoline (P. Ex. 22), failing to open the station for days at a time (App. 3), failing to carry insurance (App. 3), and losing his permit to sell gasoline due to non-payment of taxes (App. 3) Mobil terminated his franchise. (App. 3)<sup>1</sup>

Kreisher refused to leave the station, eventually forcing Mobil to file an unlawful detainer action. (App. 4) Finally, Kreisher left in January 1982. (App. 5)

On August 5, 1982, Kreisher sued Mobil, alleging a series of business torts and intentional infliction of emotional distress based upon Mobil's allegedly improper

---

<sup>1</sup> Kreisher recites his version of the facts at length, making excuses for his bounced checks and other breaches of the franchise agreement. The facts are irrelevant to the jurisdictional issue before the Court, so we will not address them.

refusal to consent to the assignment of the franchise.<sup>2</sup> Shortly before trial, on August 20, 1985, Kreisher added a new claim under the PMPA, alleging for the first time that Mobil's termination of his franchise violated the federal act. (CT 860-70)

At trial, Mobil moved for a nonsuit on the PMPA claim on the grounds that (1) it was time-barred under the applicable one-year statute of limitations, 15 U.S.C. § 2805(a); and (2) the federal courts have exclusive jurisdiction over claims under the PMPA.<sup>3</sup> The trial court denied the motion, and the PMPA claim went to the jury. Mobil renewed the arguments in its post-trial motion for judgment notwithstanding the verdict, and the trial court granted the motion. It held that the PMPA claim was time-barred (App. 6, 26) and, in any event, that it could only be maintained in federal court. *Id.*

The California Court of Appeal affirmed the trial court's decision on the PMPA claim. The Court of Appeal

---

<sup>2</sup> The California Court of Appeal held that Mobil was permitted to rely on the law in force at the time, which allowed Mobil to refuse to consent to Kreisher's proposed assignments of the franchise. (App. 12-24) That decision is not at issue here.

<sup>3</sup> Kreisher suggests that Mobil somehow waived its jurisdictional challenge to the PMPA claim by not raising it before trial. Petition at 10, 11. First, contrary to Kreisher's suggestion (Petition at 5, 6), the PMPA issue was not even in the case until three months before trial. More important, a party may challenge a court's subject matter jurisdiction at any time during the proceedings, and a party's conduct cannot confer jurisdiction where there is none. See *American Fire Casualty Co. v. Finn*, 341 U.S. 6, 17-18 (1951); *Mansfield, Coldwater & Lake Michigan Ry. v. Swan*, 111 U.S. 379, 382 (1884).

held that there was "no need to determine the soundness of the alternative [statute of limitations] grounds" (App. 27-28), because the trial court correctly held that damage actions under the PMPA are "within the exclusive jurisdiction of the federal courts." (App. 26) The Court of Appeal declined to publish the portion of its decision that relates to the PMPA claim, because it did "not meet the standards for publication contained in rule 976(b) of the California Rules of Court." (App. 1, 26)<sup>4</sup> Kreisher sought rehearing in the Court of Appeal, and also asked the court to publish the PMPA portion of its decision. The Court of Appeal denied the petition and again refused to publish the PMPA portion of the decision. (App. 31)

Kreisher then sought review in the California Supreme Court. He also asked the California Supreme Court to order the PMPA portion of the Court of Appeal's decision to be published. The California Supreme Court summarily denied review on May 5, 1988. It also denied

---

<sup>4</sup> Rule 976(b) provides:

No opinion of a Court of Appeal . . . may be published in the Official Reports unless the opinion:

- (1) establishes a new rule of law, applies an existing rule to a set of facts significantly different from those stated in published opinions, or modifies, or criticizes with reasons given, an existing rule;
- (2) resolves or creates an apparent conflict in the law;
- (3) involves a legal issue of continuing public interest; or
- (4) makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law.

"the request for an order directing further publication of the opinion." (App. 32)

Kreisher timely filed his Petition for Certiorari in this Court.

---

### REASONS FOR DENYING THE WRIT

#### I. THIS CASE DOES NOT MEET THE CRITERIA FOR CERTIORARI UNDER SUPREME COURT RULE 17.1(b).

Kreisher says that review is appropriate under Rule 17.1(b) because there is a "conflict between state courts on a federal issue." Petition at 3. He misunderstands the Court's rule and the purposes behind it.<sup>5</sup>

Supreme Court Rule 17, which defines the "considerations governing review on certiorari," states that certiorari may be proper "when a state court of *last resort* has decided a federal question in a way in conflict with the decision of another state court of *last resort* or of a *federal court of appeals*." Rule 17.1(b) (emphasis added). The rule reflects the importance of allowing the highest courts around the country to develop the law and define areas of conflict (if any) before this Court, as the final arbiter,

---

<sup>5</sup> Kreisher says that the Court's jurisdiction is based on Supreme Court Rule 17. Needless to say, the Court's Rules do not confer jurisdiction; if they did, there would be no jurisdiction here, for there has been no decision from any "state court of last resort" on the PMPA jurisdiction issue. Presumably, Kreisher seeks review pursuant to 28 U.S.C. § 1257(3).

steps in. See 13 J. Moore, *Moore's Federal Practice* ¶ 817.21 (1988).

The jurisdictional issue here, if indeed there is a substantial issue (pp. 9-13, below), has not been addressed by a "state court of last resort," in this case or any other. Nor has the issue been addressed by a single "federal court of appeals." Indeed, the thrust of Kreisher's Petition is that the unpublished decision below agrees with two other lower court decisions (one from California federal district court and one from another California intermediate appellate court), rather than with the decision of a Pennsylvania intermediate appellate court. Compare *Rustom v. Atlantic Richfield Co.*, 618 F. Supp. 210 (C.D. Cal. 1985); *Niakan v. Samaan*, 199 Cal. App. 3d 716 (1988) with *Johnson v. Mobil Oil Corp.*, 528 A.2d 155, 163-64 (Pa. Super. 1987).<sup>6</sup> But the *Johnson* case, on which Kreisher primarily relies, is not final; the Pennsylvania Supreme Court has granted review of the jurisdiction issue. See *Johnson v. Mobil Oil Corp.*, 544 A.2d 445 (Pa. July 18, 1988). Thus, there may well be no conflict at all. Where few courts at all have addressed the jurisdictional issue, much less any federal circuit court or state court of last resort, there is no occasion for this Court to address it.

---

<sup>6</sup> In an effort to create a more substantial conflict, Kreisher manufactures "holdings" in cases that say nothing whatever about jurisdiction over PMPA claims. Petition at 11-12. Most of the so-called "holdings" are cases in which the PMPA was set up as a defense to an eviction action. See *Bates v. Chevron*, 260 S.E.2d 367 (Ga. App. 1979) (court also held that pursuing PMPA claims in federal court is "the proper way to invoke [PMPA] protections"); *Walters v. Chevron U.S.A., Inc.*, 269 S.E.

(Continued on following page)

This case is particularly inappropriate for review. First, the decision below is unpublished, and therefore cannot be cited or relied on. See Cal. Rule of Court 977(a)

---

(Continued from previous page)

2d 495 (Ga. App. 1980); *Consumers Pet. of Conn., Inc. v. Duhan*, 452 A.2d 123 (Conn. Super. 1982); *ARCO Petroleum Prods. Co. v. Williams*, 496 N.E.2d 1098 (Ill. App. 1986). Even where federal courts have exclusive jurisdiction over claims arising under a particular federal statute, state courts properly adjudicate state-law claims that entail defenses based on federal law. See pp. 11-12, below. Other "holdings" deal with common-law actions that only incidentally involve the PMPA, and do not address PMPA jurisdiction because no affirmative PMPA claim was at issue. See *Frankard v. Amoco Oil Co.*, 342 N.W.2d 247 (Wis. App. 1983) (in analyzing common-law economic duress claim, court determines that under PMPA, franchisor had no basis for threatening to cancel franchise); *ERA Enterprises, Inc. v. Gulf Oil Corp.*, 506 So. 2d 160 (La. App. 1987) (specific performance of real property sales contract unavailable where seller gave right of first refusal to franchisee under PMPA, and franchisee chose to buy property). Still other "holdings" reject PMPA claims outright without any discussion of jurisdiction. See *DaCosta's Automotive, Inc. v. Birchwood Plaza Shell, Inc.*, 482 N.Y.S.2d 832 (1984) (non-franchisee has no standing to assert claim under PMPA); *Ricco v. Shell Oil Co.*, 434 A.2d 1151 (N.J. Super. 1981) (state-law claims preempted by PMPA; PMPA claim rejected); *Thomas v. Amoco Oil Co.*, 455 So. 2d 1187 (La. App.), *rev. denied*, 460 So. 2d 612 (1984) (summarily holds PMPA does not apply to plaintiff's contract action). Finally, Kreisher cites dictum in two cases, a RICO case that had nothing to do with the PMPA (*Cianci v. Superior Court*, 40 Cal. 3d 903 (1985)), and a preemption case in which the court reversed an injunction that was based upon the preempted state law, not the PMPA (*Calif. ARCO Dist., Inc. v. Atlantic Richfield Co.*, 158 Cal. App. 3d 349 (1985)). None of Kreisher's "holdings" is relevant, let alone affects whether the Court should grant review in this case.



("An opinion that is not ordered published shall not be cited or relied on by a court or a party in any other action . . . "). Thus, it does not (and cannot) cause the "confusion and inconsistency" Kreisher fears. Petition at 4. The California courts' repeated refusal to publish the decision also underscores its insignificance. *See* p. 4, n.4, above.

Second, there is an independent ground for rejecting Kreisher's PMPA claim. The trial court found that any PMPA claim that Kreisher might have is barred by the statute of limitations. Kreisher's franchise terminated on June 18, 1981. (App. 3; P. Ex. 22; CT 1253) Under the PMPA's one-year statute of limitations (15 U.S.C. § 2805(a)), any PMPA claim expired on June 18, 1982. Kreisher did not file any complaint until August 5, 1982 (App. 5), and did not file a PMPA claim until three years later, on August 20, 1985. (CT 860-70) Accordingly, the trial court held that Kreisher's PMPA claim, if any, was time-barred. Although the Court of Appeal did not reach the issue, it did observe that Kreisher's "contentions to the contrary" were not convincing. (App. 26) Thus, even if this Court were to grant review and agree with Kreisher on the jurisdiction issue, the result would be the same.

In sum, in the ten years that the PMPA has been in force, only a handful of courts have considered whether PMPA jurisdiction is exclusively federal or concurrent. No state court of last resort and no federal circuit court has ruled on the issue. Until the case law matures, and determines whether there is even a dispute to resolve, this Court should stay its hand. The Court should pass up this case in particular, because it is unpublished and



unlikely to cause confusion, and because the PMPA claim Kreisher asks to have reviewed is time-barred in any event.

## II. THERE IS NO SUBSTANTIAL FEDERAL ISSUE TO RESOLVE.

Kreisher endorses the intermediate appellate decision in *Johnson*<sup>7</sup> and argues that the Court should adopt it and reject the reasoning of the Court of Appeal in this case and of the courts in *Niakan* and *Rustom*. But no court has ever followed *Johnson*, and with good reason. *Johnson* fails to explain the federal statute's exclusive reference to federal courts as the place for enforcement of PMPA claims and ignores the legislative history that contemplates federal control over the act and the standards for its enforcement. Moreover, the Pennsylvania Supreme Court has granted review of the *Johnson* court's analysis on the PMPA jurisdictional issue.

The PMPA provides that parties may seek redress for violations of the PMPA "in the district court of the United States in any judicial district in which the principal place of business of such franchisor is located or in which such franchisee is doing business . . . ." 15 U.S.C. § 2805(a).<sup>8</sup>

---

<sup>7</sup> Kreisher also likes the result in *Ted's Tire Service, Inc. v. Chevron U.S.A., Inc.*, 470 F. Supp. 163 (D. Conn. 1979) (Petition at 2, 11), but does not rely on its reasoning, for there is none.

<sup>8</sup> Thus, Congress considered geography and judged that these venue choices would meet franchisees' needs. Kreisher disagrees with Congress' assessment, and says that federal courts may be inconvenient to some franchisees. Petition at 13. That is irrelevant; whether jurisdiction is exclusive depends on Congress' intent, not on an individual litigant's view of its wisdom.

The PMPA goes on to incorporate federal procedural standards, stating that damages are available "consistent with the Federal Rules of Civil Procedure," and applying Rule 65 standards for the issuance of injunctions. 15 U.S.C. §§ 2805(d)(1)(A), 2805(b)(2).<sup>9</sup> Thus, the plain terms of the statute contemplate federal, not state, jurisdiction over PMPA claims.

The legislative history confirms this. Both the Senate and House Reports state that "the provisions of Title I are enforceable by private civil action in U.S. District Court." S. Rep. No. 95-731, 95th Cong. 2d Sess., *reprinted in*, 1978 U.S. Code Cong. & Ad. News at 874; H.R. Rep. No. 95-161, 95th Cong. 1st Sess. 14 (1978). *See also Rustom*, 618 F. Supp. at 212;<sup>10</sup> *Niakan*, 199 Cal. App. 3d at 720. Again,

---

<sup>9</sup> The legislative history confirms that Congress intended the issuance of injunctions to be governed by standards developed by the Second Circuit. *See* S. Rep. No. 95-731, 95th Cong. 2d Sess., *reprinted in*, 1978 U.S. Code Cong. & Ad. News 873, 899.

<sup>10</sup> Kreisher quarrels with *Rustom's* analogy to Title VII of the Civil Rights Act of 1964, which similarly provides that federal procedural rules govern and which confers exclusive federal jurisdiction. In particular, he argues that "the civil rights legislation . . . was made necessary because of the long history of discrimination against Blacks in the southern states" and that "Congress might justifiably have been concerned that the protections of the Civil Rights Act would be inhibited by state court enforcement of its provisions." Petition at 19. Kreisher cites nothing for his assertion, and even if true, it would not support his argument; Title VII also prohibits discrimination based on gender and religion—which was no more a problem in the southern states than elsewhere.

the legislative history contemplates only federal court action and says nothing about concurrent state jurisdiction.

Kreisher says that despite the language and history of the PMPA, the statute really contemplates concurrent jurisdiction. He cites the part of § 2805(a) that allows a PMPA action in federal court "without regard to amount in controversy" (Petition at 16), arguing that it "appear[s] to clarify Congress' intent to give to the franchisor the broadest possible access to all courts by expressly deleting a potential jurisdictional defense regarding the amount in controversy. . . ." *Id.* (emphasis in original). This is a *non sequitur*. The language on which Kreisher relies only recites what is already the fact anyway: Claims arising under federal law need not meet the jurisdictional amount; the jurisdictional amount applies only to federal cases based on diversity of citizenship. Compare 28 U.S.C. § 1331 with 28 U.S.C. § 1332.<sup>11</sup>

Next, Kreisher says that exclusive federal jurisdiction should be rejected because it "would greatly affect the federal district courts." He claims that "[i]f state courts lack jurisdiction to hear Petroleum Marketing Practices Act violation claims, dealers against whom unlawful detainer actions are brought will be required to remove those actions to federal court in order to raise PMPA defenses." Petition at 14. Again, Kreisher is confused. Even if federal courts have exclusive jurisdiction over

---

<sup>11</sup> Indeed, if the jurisdictional amount did limit federal jurisdiction over federal claims, Congress' waiver of it would prove Congress' desire to have such claims litigated in federal courts, not in "all courts" as Kreisher argues.

affirmative claims arising under a particular federal act, a party may assert defenses under that act in a state court action based upon state law. Indeed, that is the only place to assert such defenses, for a defendant may not remove a state-law action based on a federal defense. *See, e.g., American Well Works v. Layne & Bowler Co.*, 241 U.S. 257 (1916) (no removal jurisdiction where patent issue raised as defense to state law action, even though cases arising under federal patent law must be asserted in federal court).

Kreisher also argues that the preemption section of the PMPA, which preempts state laws that establish standards different from PMPA standards (15 U.S.C. § 2806(a)), defeats exclusive jurisdiction. The argument is that "[i]f states may enforce state laws identical to the PMPA, obviously Congress did not intend to preclude states from enforcing the PMPA itself." Petition at 16. Kreisher's argument confuses preemption and jurisdiction, and his conclusion is far from "obvious." States often provide parallel state-law remedies to exclusive federal remedies. *Compare* 15 U.S.C. § 1 *et seq.* (federal antitrust laws) *with* Cal. Bus. Prof. Code § 16,700 *et seq.* (California antitrust laws) *See Corwin v. Los Angeles Newspaper Service Bureau, Inc.*, 4 Cal. 3d 842, 852 (1971) (California antitrust law patterned after Section 1 of Sherman Act).<sup>12</sup>

In sum, the case on which Kreisher principally relies (*Johnson*) may be reversed, and the arguments he makes

---

<sup>12</sup> California has not enacted laws that parallel the PMPA.

based on it are misguided. There is no substantial federal question to review.

---

CONCLUSION

For the reasons stated, the Petition should be denied.

Respectfully submitted,

DAVID M. HEILBRON

JOHN R. REESE

LESLIE G. LANDAU

DONNA M. RYU

*Attorneys for Respondent  
Mobil Oil Corporation*

WILLIAM K. O'BRIEN

McCUTCHEN, DOYLE, BROWN & ENERSEN

Of Counsel

August 31, 1988



## RULE 28.1 LIST

## APPENDIX A

Mobil Oil Corporation is a wholly owned subsidiary of Mobil Corporation which is publicly held. Listed below are the affiliates and subsidiaries of Mobil Corporation, Mobil Oil Corporation, and their affiliates and subsidiaries which are or may be publicly held. For purposes of this list only companies in which a five percent (5%) or greater interest is held are considered.

## NAME OF COMPANY

Abu Dhabi Petroleum Company Limited  
 Ace Polymer Co., Ltd.  
 Adria-Wien Pipeline Gesellschaft m.b.H.  
 AIMCO (ALPHA) Shipping Company  
 AIMCO Holdings Limited  
 AIMCO (OMEGA) Shipping Company Ltd.  
 Aircraft Fuel Supply B.V.  
 Airtankdienst Koln  
 AK Chemie GmbH  
 AK Chemie GmbH & Co KG  
 Akauma Rekisei Kogyo Kabushiki Kaisha  
 Alexandroupolis Petroleum Installation S.A.  
 Allied Asphalts Limited  
 Alpa Alet Ve Dayanikli Tuketim Mamullori Pagariama A.S.  
 Altona Petrochemical Company Limited  
 Alyeska Pipeline Service Company  
 Ammenn GmbH  
 Ankara Gaz Satis Anonim Sirketi  
 Arabian American Oil Company  
 Arabian Energy Company Limited, The  
 Arabian International Maritime Company Limited  
 Arabian International Maritime Company  
 The Arabian Petroleum Supply Company (S.A.)  
 Arabian Shipping & Trading Company S.A.  
 Arabian Trading Company S.A.  
 Aral Aktiengesellschaft  
 A/S Fjellvegen

The Associated Ocel Company Limited  
 Associated Ocel Company (Plant) Limited  
 ATAS-Anadolu Tasfiyehanesi Anonim Sirketi  
 Atlas Sahara S.A.  
 Australian Synthetic Rubber Company Limited  
 Autobahn-Betriebe Gesellschaft m.b.H.  
 Aviation Fuel Services Limited  
 Aygaz Anonim Sirketi  
 B.V. Beheersmaatschappij MOBEM  
 Bayerische Erdgasleitung GmbH  
 Bin Sulaiman Mobil Towers  
 Bayerische Mineral Industrie A.G.  
 Beer GmbH  
 Beer GmbH & Co. Minerol-Vertriebe-KG  
 Bosques Nacionales, Ltda.  
 Bow Fortune S.A.  
 Bow Spring Shipping S.A.  
 Bow Star S.A.  
 Bow Sun S.A.  
 Brussels Airfuels Service S.C.  
 Buffalo River Improvement Corporation  
 Canner's Steam Company, Incorporated  
 Cansulex Limited  
 Canyon Reef Carriers, Inc.  
 Cartoenvazes Valencia, S.A.  
 Carton de Colombia, S.A.  
 Carton de Venezuela, S.A.  
 Cartones Nacionales, S.A.  
 CAS (Combined Automation Systems) B.V.  
 Celmisia Shipping Corporation  
 Celulosa y Papel de Colombia, S.A.  
 Central African Petroleum Refineries (Pvt) Limited  
 Central Kagaku Kabushiki Kaisha  
 Cercera, S.A.  
 Changi Airport Fuel Hydrant Installation Pte. Ltd.  
 Chuo Nenryo Gas Kabushiki Kaisha  
 Colombianos Distribuidores de Combustibles, S.A.  
 (CODI)  
 Colonial Pipeline Company  
 Comet-Brennstoffdienst GmbH  
 Commercial Ploymers Pty. Ltd.



Commodore Maritime Company, S.A.  
 Compagnie Africaine de Transport Cameroun  
 Compagnie D'Entreposage Communautaire  
 Compagnie Rhenane de Raffinage  
 Compagnie Senegalaise des Lubrifiants (C.S.L.)  
 Compania Colombiana de Empaques Bates, SSA  
 Compania Colombiana De Forestacion S.A.  
 Compania de Lubricants' de Chile Limitada  
 (Copec-Mobil Ltda.)  
 Compania Mexicana de Especialidades Industriales,  
 S.A. de C.V.  
 Consortium Raymond Duez  
 Constructora Calle 70, S.A.  
 Cook Inlet Pipe Line Company  
 Corrugadora de Carton, S.A.  
 Cyprus Petroleum Refinery Limited  
 D. Muhlenbruch GmbH  
 D. Muhlenbruch GmbH & Co. KG  
 Dai Nippon Jushi K.K.  
 Dearborn Land Company  
 De. Ba. S.p.A.-Industria Petrolifero Deposito di Bari  
 Depot Petrolier de Mourepiane  
 Depot Petrolier du Gresivaudan  
 Deport de Petrole Cotiers  
 Depots Petroliers de La Corse (DPLC)  
 Deutsche Pentosin-Werke GmbH  
 Deutsche Transalpine Celleitung GmbH  
 Dicomi S.r.l.  
 Dixie Pipeline Company  
 Dukhan Services Company  
 East Japan Oil Development Company Ltd.  
 Eastern Lease Company Ltd.  
 East Texas Salt Water Disposal Company  
 Emoleum (Asphalts) Limited  
 Energas S.r.l.  
 Entrepot Petrolier de Chambéry  
 Entrepot Petrolier de Dijon  
 Entrepot Petrolier de Mulhouse (E.P.M.)  
 Entrepot Petrolier de Nancy  
 Enterprise Jean Lefebvre  
 Erdgas-Verkaufs-Gesellschaft mbH

Erdoel-Lagergesellschaft mbH  
 Erdoel-Raffinerie Neustadt GmbH & Co. oMG  
 Erdoelbetrieb Reitbrook  
 Etablissements Bouthenet  
 Ets. Le Goff  
 Europetrol S.p.A.  
 Faavang Autoverkstad A/S  
 FACEL  
 Fairwind Maritime Company, S.A.  
 Felix Oil Company  
 Fibil, S.A.  
 Fibras Internacionales de Puerto Rico, Inc.  
 Filtros De Costa Rica S.A.  
 Finsbury Printing Limited  
 Frome-Broken Hill Company Proprietary Limited  
 Fruehmesser Mineraloelhandeis GmbH & Co. KG  
 Fruehmesser GmbH  
 Fuso Operations Kabushiki Kaisha  
 Futuro Enterprises (Christchurch) Ltd.  
 Futuro Homes (N.Z.) Ltd.  
 Gatwick Refueling Services Limited  
 Gaz Aletleri Anonim Sirketi  
 Geomines-Caen  
 Geovexin  
 Ghana Bunkering Services Limited  
 Goteborgs Branslesortering AB  
 Groupement Immobilier Petrolier G.I.P.  
 Groupement Petrolier Aviation G.P.A.  
 Groupement Petrolier De Brest (GPB)  
 Handelmaatschappij Hugenholtz & Co. B.V.  
 Haniel Handel GmbH  
 H. van der Heijden Service Stations B.V.  
 Heizoel-Handelsgesellschaft mbH  
 Hellas Gas Storage Company S.A.  
 Hormoz Petroleum Company  
 Hydranten-Betriebs-Gesellschaft, Flughafen Frankfurt  
 Imbert G. Distribution De Produits Petroliers  
 Inmunizadoras Unidas, S.A.  
 Industria De Carbon Del Valle Cauca, S.A.  
 Induustria Interamericana De Filtros Ltda. (INTERFIL)  
 Iranian Oil Participants Limited

Iranian Oil Services (Holdings) Limited  
 Iranian Oil Services Limited  
 Iraq Petroleum Company, Limited  
 Iraq Petroleum Pensions Limited  
 Iraq Petroleum Transport Company Limited  
 Iside, S.p.A.  
 Istanbul Petrol ve Makine Yaglari Limited Sirketi  
 Italoil S.p.A.  
 Japan Airport Fueling Service Co. Limited  
 J.E.C.O.P.  
 K.K. Sankyo Plastics  
 K.K. Toresen  
 Kanto Kygnus Sekiyu Hambai K.K.  
 Karl Storz GmbH & Co. KG  
 Kawasaki Kygnus Sekiyu Hambai Kabushiki Kaisha  
 Keinin Kygnus Sekiyu Hambai Kabushiki Kaisha  
 Keiyo Sea-Berth Company, Limited  
 Kettleman North Dome Association  
 Klaus Koehn GmbH  
 Klaus Koehn GmbH & Co. Mineraloel KG  
 Kobe Port Service Kabushiki Kaisha  
 Kurt Ammenn GmbH & Co. K.G.  
 Kygnus Ekika Gas Kabushiki Kaisha  
 Kygnus Kosan Kabushiki Kaisha  
 Kygnus Sekiyu Kabushiki Kaisha  
 Kyokyto Petroleum Overseas, Ltd.  
 Kyokuto Sekiyu Kogyo Kabushiki Kaisha  
 Leporati S.p.A.  
 Les Supermarches De Cote D'Ivoire  
 Kikit Petrol Gazi ve Yakıt Ticaret A.S.  
 Loba Chemie Gesellschaft mbh  
 Lubland Limited  
 Lubricantes del Sur, S.A.  
 Marceaux & Cie  
 Matco Tankers (U.K.) Limited  
 Maury Manufacturing Company, Inc.  
 Mediterranean Refining Company  
 Meentzen & Franke GmbH & Co.  
 Mertl GmbH  
 Mineralol-Handels-Gesellschaft MbH  
 Mobil Atlas Sociedad Anonima de Capital Variable

Mobil Catalyst Corporation of Japan  
 Mobil Comercio, Industria e Servicos Ltda.  
 Mobil Gaz-Mobil Petrol Gazlari Anonim Sirketi  
 Mobil Korea Lube Oil Industries Inc.  
 Mobil Motor Rest AG  
 Mobil Nile Oil Company  
 Mobil Oil Gabon  
 Mobil Oil Ghana Limited  
 Mobil Oil Maroc  
 Mobil Oil Nigeria Limited  
 Mobil Oil Nord-Africaine  
 Mosul Petroleum Company Limited  
 Motel Rest SA  
 Mt. Marrow Blue Metal Quarries Pty.  
 Near East Development Corporation  
 Neptune Bulk Terminals (Canada) Ltd.  
 New Zealand Refining Company Limited, The  
 New Zealand Synthetic Fuels Corp. Ltd.  
 New Zealand Synthetic Fuels (Housing)  
 Corporation Limited  
 Nichimo Oil (Bermuda) Co., Ltd.  
 Nichimo Sekiyu Seisei Kabushiki Kaisha  
 Nippon Unicar Company Limited  
 Norddeutsche Erdgas-Aufbereitungs GmbH  
 Nottingham Gas Limited  
 Nuova Europetrol S.p.A.  
 N.V. Rotterdam-Rijn Pijpleiding Maatschappij  
 N.V. Socony-Standard-Vacuum Oil Company  
 Occidental de Empaques, Ltda.  
 Octel Associates  
 Octel S.A.  
 Oilkol (Proprietary) Limited  
 Oil Service Company of Iran (Private Company)  
 Oldenburgische Erdoel Gesellschaft mit  
 beschränkter Haftung  
 Olympic Pipe Line Company  
 Osage Pipe Line Company  
 P.T. Arun Natural Gas Liquefaction Company  
 P.T. Berau Coal  
 P.T. Stanvac Indonesia  
 Paloma Pipe Line Company

Pars Investment Corporation  
 Paul Harling Mineralole Gmbh & Co. KG  
 P.6-Groep B.V.  
 Perretti Petroli S.p.A.  
 Petrocab  
 Petrogas Processing Ltd.  
 Petroleum Development (Cyprus) Limited  
 Petroleum Refineries (Australia) Proprietary Limited  
 Petroleum Services (Middle East) Limited  
 Petroleum Tankship Company Inc.  
 Petrol Fuel S.p.A.  
 Petromin Lubricating Oil Refining Company  
 Petromin-Mobil Yanbu Refinery Company Ltd.  
 Pipe Line Banal de La Goulette  
 Plegadizos para la Industria S.A.  
 Poly Oil Chimie (P.O.C.)  
 Products Derivados de la Sal, S.A.  
 Progas Limited  
 Qatar Petroleum Company Limited  
 Qualbank, Inc.  
 Rainbow Pipe Line Company, Ltd.  
 Reforestadora Andina, S.A.  
 Reforestadora del Cauca, S.A.  
 Rhodes Petroleum Installation S.A.  
 Rivers Court Estates, Limited  
 Road Binders (Proprietary) Limited  
 Rohol-Aufauchungs Gesellschaft mbH  
 Rundel Mineralolvertrieb Gmbh  
 Samarco (Alpha) Shipping Company  
 Samarco (Beta) Shipping Company  
 Santa Clara Waste Water Company  
 Sanwa Kasei Kogyo Kabushiki Kaisha  
 Sarni S.p.A.  
 Saudi Arabian Maritime Company  
 Saudi Can Company, Ltd., The  
 Saudi Chemical Industries Company Limited  
 Saudi Maritime Company Ltd.  
 Saudi Tankers Limited  
 Saudi Yanbu Petrochemical Company  
 Schubert Kommanditgesellschaft  
 Segher de Mexico, S.A. de C.V.

Seibu Kygnus Sekiyu Hambai Kabushiki Kaisha  
 SENERCO  
 Seram Societa per Azioni (S.p.A.)  
 Sierra Leone Petroleum Refining Company Limited, The  
 Sociedad Calle 67, Ltda.  
 Sociedade Portugal Marrocos SARL  
 Societa Italiana per l'Oleodotto Transalpino, S.p.A.  
 Societe Africaine de Raffinage  
 Societe Alfred Ott & Cie  
 Societe Beige de Transport par Pipeline S.A.  
 Societe Camerounaise des Depots Petroliers (S.C.D.P.)  
 Societe Camerounaise Equatoriale De Fabrication  
 De Lubrifiants "S.C.E.F.L."  
 Societe Civile de Mustapha  
 Societe Civile Immobiliere Courcelles-Etoile  
 Societe Civile Immobiliere de Construction  
 de 34 Avenue du General Leclerc a Boissy-St-Leger  
 Societe Civile Immobiliere de Construction  
 "La Residence Brune"  
 Societe Civile Immobiliere du 10 Bd. de la  
 Republique A La Garenne-Colombes  
 Societe Civile Immobiliere Kleber-Etoile  
 Societe Civile Immobiliere La Fontaine Saint Lucien  
 Societe Dahomeenne d'Entreposage de Produits  
 Petroliers  
 Societe d'Armement Fluvial et Maritime "SOFLUMAR"  
 Societe de Construction & de Gestion CM 12  
 Societe de Distribution Castelroussine (SODICA)  
 Societe de Gaz D'Oceanic (SOGADOC)  
 Societe de Gestion des Stocks Petroliers de Cote D'Ivoire  
 Societe de Manutention de Carburants Aviation  
 (S.M.C.A.)  
 Societe de Manutention de Carburants Aviation  
 Dakar-Yoff  
 Societe de Manutention de Carburants Aviation  
 de Tahiti (SOMCAT)  
 Societe de Materiaux d'Etancheite Pour Les Entreprises  
 (Meple)  
 Societe d'Entreposage de Bobo-Dioulasso (S.E.B.)  
 Societe d'Entreposage d'Hydrocarbures de Bingo (SEHBI)  
 Societe d'Entreposage de San Pedro (SESP)

Societe d'Entreposage Petrolier au Burundi  
 Societe d'Habitations a Loyer Modere de la  
 Seine Maritime  
 Societe des Bitumez et Cut-Backs du Cameroun  
 Societe Des Huiles Lemahieu  
 Societe du Pipe Line Sud-Europeen  
 Societe Francaise Stoner-Mudge  
 Societe Gabonaise d'Entreposage de Produits Petroliers  
 Societe Gabonaise de Raffinage  
 Societe Industrielle des Asphaltes et Petroles  
 de Lattaquia (Syrie) S.A.  
 Societe Ivoirienne de Fabrication de Lubrifiants  
 (S.I.F.A.L.)  
 Societe Ivoirienne de Raffinage  
 Societe Mauritanienne d'Entreposage de Produits  
 Petroliers  
 Societe Malienne D'Entreposage (SME)  
 Societe Nationale de Raffinage (Sonara)  
 Societe Nouvelle pour l'Opuration des Muilec  
 do Transforateura-Septro  
 Societe Pizo De Formulation De Lubrifiants (PIZOLUB)  
 Societe Tahitienne de Depots Petroliers  
 Societe Tchadienne D'Entreposage de Produits  
 Petroliers  
 Societe Togolaise d'Entreposage (STE)  
 Sonarep (South Africa) (Proprietary) Limited  
 SONEX  
 South African Oil Refinery (Proprietary) Limited  
 South Saskatchewan Pipe Line Company  
 Statfjord Transport A.S.  
 Sydney Metropolitan Pipeline Pty. Ltd.  
 Syria Petroleum Company Limited  
 System Plaza Inc.  
 T.R. Miller Mill Company, Inc.  
 Tankbau Gmbh  
 Tanklagergesellschaft Koln-Bonn  
 Tecklenburg GmbH  
 Tecklenburg GmbH & Co. Energiebedarf K.G.  
 Thailand Lubricant Products Limited  
 Thailand Solvent Products, Ltd.  
 Thums Long Beach Company



T.M. Duche Co., Inc.  
Toa Nenryo Kogyo Kabushiki Kaisha  
Tohko Plastics Co., Ltd.  
Tonen Energy International Corp.  
Tonen Maintenance Kabushiki Kaisha  
Tonen Sekiyu Kagaku Kabushiki Kaisha  
Tonen Tanker Kabushiki Kaisha  
Tonen Technology Kabushiki Kaisha  
Total Centrafricaine de Gestion (TOCAGES)  
Toyoshina Film Co., Ltd.  
Tradewind Maritime Co., S.A.  
Transalpine Finance Holdings S.A.  
Transalpine Oelleitung in Oesterreich Gesellschaft m.b.H.  
Trans-Arabian Pipe Line Company  
Transgas Umschlags-Lager-Und Transport  
Gesellschaft MbH  
Turkish Petroleum Company Limited  
Twifo Oil Palm Plantations Ltd.  
UBAG Unterflur Betankungsanlage Flughafen Zurich  
Union Grafica, S.A.  
United Kingdom Oil Pipelines Limited  
W.A.G. Pipeline Pty. Ltd.  
Wako Kasei Kabushiki Kaisha  
Wakohjushi Kabushiki Kaisha  
Walton, Gatwick Pipeline Company Limited  
Werner Weidemann Mineraloelvertrieb G.m.b.H.  
Western Platinum Ltd.  
West London Pipeline & Storage Limited  
West Shore Pipe Line Company  
Wilhelm Martl GmbH & Co. KG  
Wolverine Pipe Line Company  
WSG, Warmeservice GmbH  
Wyco Pipe Line Company  
Wymondham Oil Storage Co., Limited  
Zaire Mobil Oil  
Zaire Services Des Enterprises Petrolieres



